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10/667,992	09/22/2003	Daozheng Lu	20004/12-US-A	1955

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EXAMINER
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SCHNURR, JOHN R

ART UNIT	PAPER NUMBER
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2623

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08/22/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/667,992

**Applicant(s)**

LU ET AL.

**Examiner**

John R. Schnurr

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 79-111 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 79-111 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/22/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. This Office Action is in response to Application No. 10/66,992 filed 09/22/2003.

Claims 79-111 are pending and have been examined.

2. The information disclosure statement (IDS) submitted on 12/22/2003 was considered by the examiner.

### *Double Patenting*

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 413 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims **79-111** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 8-23 and 33 of U.S. Patent No. 6,647,548. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are different definitions or descriptions of the

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same subject matter varying in breadth. For example, note the following relationship between the instant application and the patented claims.

- a) the preamble of application claim 1 corresponds to the preamble of patented claim 8;
- b) the claimed code reader (lines 5-6) of application claim 79 corresponds to the first data collector (lines 2-7) of the patented claim 8;
- c) the claimed channel detector (lines 7-8) of the application claim 79 corresponds to the second data collector (lines 8-11) of the patented claim 8;
- d) the claimed timestamper (lines 9-10) of the application claim 79 corresponds to the patented claims 13 and 14;
- e) the claimed memory (line 11) of the application claim 79 corresponds to the memory (lines 12-17) of the patented claim 8.

It would have been obvious to one of ordinary skill in the art to readily recognize that the conflicting claims are different definitions or descriptions of the same subject matter varying in breadth. In this case, the application claims are broader and inclusive to the patented claims.

Additionally, it would have been obvious to one of ordinary skill in the art to modify the claimed invention to include a communication device to forward the collected data to a remote processing site because the collected raw data is of no use unless it is collected and processed.

Claims 89, 90 and 108-111 of the application correspond to claims 8, 13 and 14 of the patent.

Claim 80 of the application corresponds to claim 8 of the patent.

Claims 81 and 91 of the application correspond to claim 9 of the patent.

Claims 82 and 92 of the application correspond to claim 10 of the patent.

Claim 83 of the application corresponds to claim 9 of the patent.

Claim 84 of the application corresponds to claim 8 of the patent.

Claims 85 and 96 of the application correspond to claim 14 of the patent.

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Claims 86 and 97 of the application correspond to claim 15 of the patent.

Claims 87 and 98 of the application correspond to claim 16 of the patent.

Claims 88 and 99 of the application correspond to claim 17 of the patent.

Claim 93 of the application corresponds to claim 11 of the patent.

Claim 94 of the application corresponds to claim 12 of the patent.

Claim 95 of the application corresponds to claim 13 of the patent.

Claim 100 of the application corresponds to claim 18 of the patent.

Claim 101 of the application corresponds to claim 19 of the patent.

Claim 102 of the application corresponds to claim 20 of the patent.

Claims 103 and 104 of the application correspond to claims 21 and 22 of the patent.

Claim 105 of the application corresponds to claim 8 of the patent.

Claim 106 of the application corresponds to claim 33 of the patent.

Claim 107 of the application corresponds to claim 14 of the patent.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims **79, 80, 84, 85, 90, 96, 105, 107 and 108-111** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kiewit (US Patent 4,876,736)** in view of **Haselwood et al. (US Patent 4,025,851)**, herein Haselwood.

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Consider **claim 79**, Kiewit clearly teaches an audience measurement system for collecting program identifying data associated with a program which is transmitted from a signal source and to which a receiver is tuned, **(Fig. 1) the audience measurement system comprising:**

a channel detector to collect a channel identifier which is manually entered by a user of the receiver; **(The user input the channel, column 3 lines 9-11, and stores the channel reception data, column 3 lines 21-25.)**

a timestamper to associate a time with the ancillary code and/or the channel identifier; **(column 3 lines 21-25)**

a memory to store the ancillary code and/or the channel identifier; **(Fig 1: Data storage and communication device 46, stores the channel data, column 3 line 66 to column 4 line 3.)**

a communication device to forward at least one of the time-stamped ancillary code and the time-stamped channel identifier to a remote processing site. **(column 3 line 66 to column 4 line 3)**

However, Kiewit does not explicitly teach a code reader to read an ancillary code associated with the program to which the receiver is tuned;

In an analogous art Haselwood, which discloses a system for monitoring broadcast programs, clearly teaches a code reader to read an ancillary code associated with the program to which the receiver is tuned. **(column 5 lines 63-66 and column 6 lines 23-26)**

Therefore, at the time the invention was made, it would have been obvious to one with ordinary skill in the art to modify the system of Kiewit by reading a code identifying the program from the programming signal, as taught by Haselwood, for the benefit of easily identifying the programs at monitoring sites (column 1 lines 53-59 Haselwood).

Consider **claim 80**, Kiewit combined with Haselwood, as in claim 79, clearly teaches a program identifier to identify the program to which the receiver is tuned from at least one of the ancillary code and the channel identifier. **(column 5 lines 63-66, Haselwood)**

Consider **claim 84**, Kiewit combined with Haselwood, as in claim 79, clearly teaches the channel detector collects the channel identifier if the code reader does not read an ancillary code in the program tuned by the receiver. **(In view of**

**manual entry of the channel ID the system collects the channel ID regardless of the code reader.)**

Consider **claim 85**, Kiewit combined with Haselwood, as in claim 79, clearly teaches the channel detector comprises a sensor responsive to a remote control operated by the user of the receiver. **(Fig. 1 Receiver 28 column 3 lines 9-11 Kiewit)**

Consider **claim 89**, see claim 79.

Consider **claim 90**, see claim 79.

Consider **claim 96**, see claim 85.

Consider **claim 105**, Kiewit combined with Haselwood, as in claim 79, clearly teaches the audience measurement system is a household audience measurement system. **(Fig. 1: The channel detection apparatus is physically connected to the television receiver, Kiewit.)**

Consider **claim 107**, see claim 85.

Consider **claims 108-111**, see claim 79.

7. Claims **81-83 and 91-92** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kiewit (US Patent 4,876,736)** in view of **Haselwood et al. (US Patent 4,025,851)** as applied to claims 79 and 90 above, and further in view of **Kiewit (US Patent 4,930,011)**, herein Kiewit '011.

Consider **claim 81**, Kiewit combined with Haselwood, as in claim 79, clearly teaches an audience measurement system.

However, Kiewit combined with Haselwood, as in claim 79, does not explicitly teach a people identifier to identify people in an audience of the receiver.

In an analogous art Kiewit '011, which discloses a system for television audience measurement, clearly teaches a people identifier to identify people in an audience of the receiver. **(column 2 lines 16-55)**

Therefore, at the time the invention was made, it would have been obvious to one with ordinary skill in the art to modify the system of Kiewit combined with Haselwood, as in claim 79, by identifying the audience members, as taught by

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Kiewit '011, for the benefit of identifying individual members of a viewing audience (column 2 lines 21-26 Kiewit '011).

Consider **claim 82**, Kiewit combined with Haselwood and Kiewit '011, as in claim 81, clearly teaches passively identifying individual people in the monitored audience. **(column 2 lines 16-55 Kiewit '011)**

Consider **claim 83**, Kiewit combined with Haselwood and Kiewit '011, as in claim 81, clearly teaches the people identifier comprises a personal people meter. **(column 2 lines 16-55 Kiewit '011)**

Consider **claim 91**, see claim 81.

Consider **claim 92**, see claim 82.

8. Claims **86, 87, 97 and 98** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kiewit (US Patent 4,876,736)** in view of **Haselwood et al. (US Patent 4,025,851)** as applied to claims 79 and 90 above, and further in view of **Hendricks et al. (US Patent 5,798,785)**, herein Hendricks.

Consider **claim 86**, Kiewit combined with Haselwood, as in claim 79, clearly teaches an audience measurement system with a channel detector.

However, Kiewit combined with Haselwood, as in claim 79, does not explicitly teach a prompter to prompt manual entry of the channel identifier.

In an analogous art Hendricks, which discloses a system for gathering user data, clearly teaches a prompter to prompt manual entry of the channel identifier. **(column 12 lines 26-29)**

Therefore, at the time the invention was made, it would have been obvious to one with ordinary skill in the art to modify the system of Kiewit combined with Haselwood, as in claim 79, by prompting for manual entry of the program identifier, as taught by Hendricks, for the benefit of allowing the user to interact with a menu of options (column 12 lines 22-29 Hendricks).

Consider **claim 87**, Kiewit combined with Haselwood and Hendricks, as in claim 86, clearly teaches wherein the prompter provides onscreen prompts. **(column 12 lines 26-29)**



Consider **claim 97**, see claim 86.

Consider **claim 98**, see claim 87.

9. Claims **88 and 99-102** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kiewit (US Patent 4,876,736)** in view of **Haselwood et al. (US Patent 4,025,851)** further in view of **Hendricks et al. (US Patent 5,798,785)** as applied to claims 79 and 90 above, and further in view of **Neustein (US Patent 5,224,150)**.

Consider **claim 88**, Kiewit combined with Haselwood and Hendricks, as in claim 79, clearly teaches an audience measurement system with a prompter.

However, Kiewit combined with Haselwood and Hendricks, as in claim 79, does not explicitly teach a transducer providing the prompt.

In an analogous art Neustein, which discloses a system for transmitting data to a user, clearly teaches a transducer providing the prompt. (**column 15 line 67 to column 16 line 3**)

Therefore, at the time the invention was made, it would have been obvious to one with ordinary skill in the art to modify the system of Kiewit combined with Haselwood and Hendricks, as in claim 79, by prompting the user via a transducer, as taught by Neustein, for the benefit of easily producing distinctive prompts (column 18 lines 45-48 Neustein).

Consider **claim 99**, see claim 88.

Consider **claims 100-102**, Kiewit combined with Haselwood, Hendricks and Neustein, as in claim 88, clearly teaches using a transducer to prompt a user. A transducer may convert electrical energy into any other form including visual and audio, including speech.

10. Claim **93** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Kiewit (US Patent 4,876,736)** in view of **Haselwood et al. (US Patent 4,025,851)** and **Kiewit (US Patent 4,930,011)** as applied to claim 91 above, and further in view of **Dufresne (US Patent 5,373,315)**, herein Dufresne.

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Consider **claim 93**, Kiewit combined with Haselwood and Kiewit '011, as in claim 91, clearly teaches an audience measurement system with a people identifier.

However, Kiewit combined with Haselwood and Kiewit '011, as in claim 91, does not explicitly teach the people identifier comprising keys permitting manual entry of identification data.

In an analogous art Dufresne, which discloses a system for television audience measurement, clearly teaches the people identifier comprising keys permitting manual entry of identification data. (**column 2 lines 58-64**)

Therefore, at the time the invention was made, it would have been obvious to one with ordinary skill in the art to modify the system of Kiewit combined with Haselwood and Kiewit '011, as in claim 91, by permitting manual entry of user identification, as taught by Dufresne, for the benefit of allowing viewer flexibility while gathering detailed data (column 2 lines 43-46 Dufresne).

11. Claims **94 and 95** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kiewit (US Patent 4,876,736)** in view of **Haselwood et al. (US Patent 4,025,851)** and **Kiewit (US Patent 4,930,011)** as applied to claim 91 above, and further in view of **Langberg (US Patent 5,732,112)**.

Consider **claims 94 and 95**, Kiewit combined with Haselwood and Kiewit '011, as in claim 91, clearly teaches an audience measurement system with a people identifier, which applies a timestamp to logged data.

However, Kiewit combined with Haselwood and Kiewit '011, as in claim 91, does not explicitly teach the transmitter applying the time stamp.

In an analogous art Langberg, which discloses a system for transmitting data signals, clearly teaches the transmitter applying the time stamp. (**column 7 lines 18-21**)

Therefore, at the time the invention was made, it would have been obvious to one with ordinary skill in the art to modify the system of Kiewit combined with Haselwood and Kiewit '011, as in claim 91, by enabling the transmitter to apply timestamps, as taught by Langberg, for the benefit of measuring propagation delay.

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12. Claims **103 and 104** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kiewit (US Patent 4,876,736)** in view of **Haselwood et al. (US Patent 4,025,851)** as applied to claim 90 above, and further in view of **Langberg (US Patent 5,732,112)**.

Consider **claims 103 and 104**, Kiewit combined with Haselwood, as in claim 90, clearly teaches an audience measurement system with a people identifier, which applies a timestamp to logged data.

However, Kiewit combined with Haselwood, as in claim 90, does not explicitly teach the transmitter applying the time stamp.

In an analogous art Langberg, which discloses a system for transmitting data signals, clearly teaches the transmitter applying the time stamp. **(column 7 lines 18-21)**

Therefore, at the time the invention was made, it would have been obvious to one with ordinary skill in the art to modify the system of Kiewit combined with Haselwood, as in claim 90, by enabling the transmitter to apply timestamps, as taught by Langberg, for the benefit of measuring propagation delay.

13. Claim **106** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kiewit (US Patent 4,876,736)** in view of **Haselwood et al. (US Patent 4,025,851)** as applied to claim 90 above, and further in view of **Brooks et al. (US Patent 5,483,276)**, herein Brooks.

Consider **claim 106**, Kiewit combined with Haselwood, as in claim 90, clearly teaches an audience measurement system.

However, Kiewit combined with Haselwood, as in claim 79, does not explicitly teach a portable audience measurement system.

In an analogous art Brooks, which discloses a system for television audience measurement, clearly teaches a portable audience measurement system. **(column 2 lines 20-37)**

Therefore, at the time the invention was made, it would have been obvious to one with ordinary skill in the art to modify the system of Kiewit combined with Haselwood, as in claim 90, by utilizing a portable device, as taught by Brooks, for

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the benefit of detecting exposures at locations both inside and outside of the home (column 1 lines 45-52 Brooks).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R. Schnurr whose telephone number is (571) 270-1458. The examiner can normally be reached on Monday - Friday, 7:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on (571) 272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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